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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

MAY - 7 1998

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)	
)	
Petition of the)	(RM No. 9258)
Connecticut Department of Public Utility)	DA 98-743
Control for Amendment to Rule Making)	

COMMENTS OF
SBC WIRELESS, INC.

SBC Wireless, Inc.¹ files these comments in opposition to the Petition of the Connecticut Department of Public Utility Control for Amendment to Rulemaking² which seeks to reverse the Commission's long standing prohibition on discriminatory treatment in the allocation of numbering resources. While SBC Wireless can appreciate the hard work and effort of the CDPUC in searching for a solution for NPA relief, a wireless-only overlay is not the solution. This Commission has consistently held that service specific overlays are discriminatory and unlawful under the Communications Act. The reversal requested by the Petition is the one action which this Commission could take to basically assure itself that wireless will never be a successful competitor of, much less a substitute, for wireline service. No rulemaking is required--the Petition should be denied.

1. THE COMMISSION SHOULD NOT REVERSE ITSELF AND ALLOW DISCRIMINATORY TREATMENT IN REGARDS TO NUMBERING RESOURCES.

A. Wireless Technologies should not be Subject to Discriminatory Treatment in the form of a Wireless Only Overlay.

"Does a physician's pager have any less public interest than a second residential line? Is a sales representative's cellular phone less worthy of numbering resources and ease of use than her

¹ SBC Wireless oversees the cellular and PCS interests of SBC Communications, Inc. Various SBC Wireless operations also resell paging service. As a provider of wireless service SBC Wireless would be severely and detrimentally impacted by any decision by the Commission to reverse itself and allow the take back of wireless numbers and the segregation of wireless technologies to a service specific overlay.

² See, In the Matter of Petition of the Connecticut Department of Public Utility Control Amendment to Rulemaking, DA 98-743 *Public Notice* (Released April 17, 1998). ("Petition")

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modem line?”³ These rhetorical questions were cited by the Illinois Commerce Commission in rejecting requests that it challenge the Commission’s finding that wireless specific overlays violate the Communications Act.

This Commission likewise has long recognized that “cellular (wireless) telephone companies are part of the network and are entitled to reasonable accommodation of their numbering requirements on the same basis as an independent wireline telephone company”.⁴ In 1994 this established policy of nondiscrimination was challenged when a wireless specific overlay plan was proposed by Ameritech-Illinois. Under the Ameritech-Illinois plan the numbering plan administrator proposed to:

- 1) cease providing central office codes in area code 708 to cellular and other wireless customers;
- 2) reserve the remaining codes in 708 for wireline customers and
- 3) require that the cellular and wireless companies to give back central office codes currently assigned to them in the 708 area code.⁵

While the plan was pending at the Illinois Commerce Commission three paging companies filed a Request for Declaratory Ruling and Interlocutory Order at the FCC in opposition to the plan.

In granting the Declaratory Ruling and upholding its established policy of non-discrimination this Commission indicated that there were three separate parts of the Ameritech Illinois proposal they were addressing as being a violation of the Communications Act:

1. Ameritech’s proposal to continue assigning NPA 708 codes to wireline carriers (including competitive access providers), while excluding paging and cellular carriers from such assignments (“**exclusion proposal**”)
2. Ameritech’s proposal to require only paging and cellular carriers to take back from their subscribers and return to Ameritech all 708 telephone numbers previously assigned to them, while wireline carriers would not be required to do so (“**take-back proposal**”)
3. Ameritech’s proposal to assign all numbers to paging and cellular carriers exclusively from the existing NPA 312 and the new NPA 630, while wireline

³ Illinois Bell Telephone Company; Petition for Approval of Stipulation and Agreement of the Parties for a 312 Relief Plan, Illinois State Commerce Commission, 95-0371, Order p. 21 (Released, November 20, 1995).

⁴ In the Matter of the Need to Promote Competition and Efficient Use of the Spectrum for Radio Common Carrier Services, 59 Rad. Reg. 2d (P&F) 1275, Memorandum Opinion and Order, Appendix B, FCC Policy Statement on Interconnection of Cellular Systems, para 4 (Released March 5, 1986).

⁵ In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, IAD 94-102, Declaratory Ruling and Order, para. 3-4 (Released January 23, 1995). (“Ameritech Order”)

carriers (and perhaps others) may continue to receive such assignments from NPA 708 ("**segregation proposal**")⁶

The Commission first determined that each of the three proposals would violate Section 202(a) of the Communications Act which prohibits "any unjust or unreasonable discrimination".⁷ The Commission noted that the "exclusion" and "segregation" proposals would "confer significant competitive advantages on the wireline companies in competition with paging and cellular companies" and that the "take-back" proposal would "confer a significant competitive advantage on wireline carriers that would be permitted to retain their NPA 708 numbers".⁸ The Commission thus found "**as a matter of law** that each of these three Ameritech proposals **violates the prohibition in the Act against unjust or unreasonable discrimination**".⁹ The Commission likewise determined that the three proposals violated Section 201(b) of the Communications Act which prohibits "unjust and unreasonable practices" noting that each of the three proposals would "impose significant competitive disadvantages on the wireless carriers, while giving certain advantages to wireline carriers".¹⁰

Less than two years ago, this Commission again formally reaffirmed its established policy against nondiscrimination in the allocation of numbering resources by rejecting arguments that the Ameritech Order should be reconsidered or limited to the precise facts of the relief plan in question.¹¹ In addressing arguments against the Ameritech Order the Commission noted:

First, we conclude that any overlay that would segregate only particular types of telecommunications services or particular types of telecommunications technologies in discrete area codes would be unreasonably discriminatory and would unduly inhibit competition. We therefore clarify the Ameritech Order by explicitly prohibiting all service specific or technology specific overlays because every service-specific or technology-specific overlay plan would

⁶ Ameritech Order, para. 21 (emphasis added)

⁷ Ameritech Order, para. 28.

⁸ Ameritech Order, para. 27.

⁹ Ameritech Order, para. 28.

¹⁰ Ameritech Order, para. 35.

¹¹ In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98); Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers (CC Docket No. 95-185); Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas (NSD File No. 96-8); Administration of the North American Numbering Plan (CC Docket No. 92-237); Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois (IAD File No. 94-102), Second Report and Order and Memorandum Opinion and Order (Released August 8, 1996). ("Telecommunications Act/NPA Relief Order").

exclude certain carriers or services from the existing area code and segregate them into a new area code.¹²

The Commission likewise rejected claims that the “Ameritech Order does not, on its face, prohibit all service-specific overlays” but instead requires “a fact specific examination of each situation to determine whether the proposed numbering plan violates the statutory prohibition of unreasonable and unjust discrimination” thus possibly allowing plans which did not contain all three elements.¹³ In rejecting such claims the Commission stated “we clearly indicated that the presence of any one of the following elements including: 1) exclusion; 2) segregation; or 3) take-back, renders a service-specific overlay plan unacceptable and violative of the Communications Act”.¹⁴ The Commission noted that they found “arguments in support of” the “proposed wireless only overlay unpersuasive”.¹⁵ In doing so the Commission reiterated that in the present Order they had “clarified the Ameritech Order by prohibiting all service-specific and technology specific area code overlays”.¹⁶

The Commission also reaffirmed its established prohibition on discrimination in relation to numbering resources in implementing the number administration provisions of the Telecommunications Act of 1996. The Act gave the Commission “exclusive jurisdiction” over the North American Numbering Plan but allowed the Commission to delegate “to State commissions or other entities all or any portion of such jurisdiction”.¹⁷ The Commission exercised its delegation authority by allowing states to “resolve matters involving the introduction of area codes within their states” but specifically prohibited the introduction of service specific overlays.¹⁸

¹² Telecommunications Act/NPA Relief Order, para. 285.

¹³ Telecommunications Act/NPA Relief Order, para. 298.

¹⁴ Telecommunications Act/ NPA Relief Order, para. 305.

¹⁵ Telecommunications Act/NPA Relief Order, para. 306.

¹⁶ Id.

¹⁷ 47 U.S.C. 251(e)(1).

¹⁸ Telecommunications Act/NPA Relief Order, paras. 281, 284-285. Thus, the Commission’s regulations (47 CFR 52.19) specifically provide in pertinent part:

© New area codes may be introduced through use of:

(3) an area code overlay, which occurs when a new area code is introduced to serve the same geographic area as an existing area code, subject to the following conditions:

The Petition requests an outright reversal of the Commission's established policy against discrimination in the allocation of numbering resources. The Petition seeks authority to do precisely the same thing that was expressly prohibited in the Ameritech Order—all three elements Segregation, Exclusion and Take Back are present in the Department's proposal. In response to the question in the Public Notice requesting comments on the Petition, nothing has changed which would warrant the reversal of the Commission's past decision. There has been no change in the Communications Act which would legitimize a service specific overlay. Competition in the wireless industry is flourishing and, as explained below, the Commission has acknowledged that there are a number of trends that may point to the eventual use of wireless as not just a "supplementary communications tool to traditional wireline service but as a substitute for such service".¹⁹ Thus, the only "change in circumstances" favors the continuation of the Commission's prohibition on discriminatory treatment—not the elimination of such prohibition.

The discriminatory effect of a wireless only overlay cannot be denied. Wireless carriers would be required to take back and return all of their existing numbers and would be segregated to a separate NPA. In order to take back numbers, wireless telephone carriers will be required to contact each customer and reprogram each handset by deleting the old number and programming the new number in the phone, in the network and in the billing systems. The cost associated with the reprogramming of the

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- (iii) No area code overlay may be implemented unless all central office codes in the new overlay area code are assigned to those entities requesting assignment on a first-come, first serve, basis regardless of the identity of, technology used by, or type of service provided by that entity. No group of telecommunications carriers shall be excluded from assignment of central office codes in the existing area code, or be assigned such codes only from the overlay code, based on that group's specific type of telecommunications service or use of a particular technology

¹⁹ Report of the Federal Communications Commission, Second Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, p. 53 (Released March 25, 1997). (Second Annual CMS Competition Report).

handsets has been estimated to be \$50 per wireless handset.²⁰ Further, wireless would be segregated to a separate and distinct area code which will effect the acceptance of wireless service. For example, a sole proprietor or small businessperson such as a plumber, taxi driver or other service personal who relies on a wireless phone or pager as a primary communication device to be accessible when out performing services will find reliance on a number from a wireless only NPA less attractive. Such businesses would be forced to either 1) be segregated to an area code which identifies their main contact number as a wireless number or 2) possibly change to a wireline answering service. Use of a state wide wireless only NPA, which overlaps several traditional landline NPAs, such as proposed in the Petition could also cause confusion regarding whether a call to a wireless number from a wireline phone is local or toll. Segregation to a separate unique area code for wireless and exclusion from the wireline area code will have an immediate and detrimental effect on the acceptance and usage of wireless services, in addition to the costs associated with the take-back.

The most drastic long lasting effect of a wireless only overlay is the devastating impact it will have on the potential for wireless carriers to compete against wireline carriers. Forcing wireless to a separate area code will virtually assure the Commission that wireless will not be an alternative to wireline service. This Commission has previously taken steps attempting “to ensure the continued development of wireless services as a potential competitor to LEC services”.²¹ As the Commission noted in the Second Annual Report on CMS Competition “there are a number of trends apparent in the increased use of wireless telephony that may point to the eventual use of wireless telephony as not just a supplementary communications tool to traditional wireline service but as a substitute for such service”.²² As the Second Annual Report on CMS Competition notes, the primary obstacle to wireless being a full

²⁰ See, Petition, Attachment 1 p. 33. See also, In the Matter of Petition for Declaratory Ruling Filed by the Massachusetts Department of Public Utilities Regarding Area Code Relief Plan for Area Codes 508 and 617, NSD 96-15, *Comments of Southwestern Bell Mobile Systems, Inc*, Affidavit of Professor Jerry A. Hausman filed November 18, 1996.

²¹ Second Annual CMS Competition Report, p. 60.

²² Second Annual CMS Competition Report, p. 53.

substitute for wireline appears to be premium cost associated with wireless, however the report also notes that this is likely to change given the effect additional spectrum allocations and increased number of competitors may have on the wireless market.²³ Increased competition has in fact resulted in reduced rates with some recent reports that prices have plunged by an average of 46%.²⁴

As Chairman Kennard recently noted, Congress in enacting the Omnibus Budget Reconciliation Act of 1993 “recognized PCS and other wireless technologies on the horizon as not just complements to the telephone network but potential competitors, and ultimately, as substitutes”.²⁵ In noting that “key decisions are ahead . . . areas where the wrong decisions can be costly” Chairman Kennard specifically stated:

Another competitive imperative is to make sure that we have a technology neutral allocation of network resources. This means avoiding numbering exhaustion, avoiding overlay plans that aren’t competitively neutral. . .²⁶

As Chairman Kennard notes, the wrong decision here will be very costly. Abandoning the established policy of nondiscrimination in the allocation of numbering resources and allowing a wireless specific overlay will do more to set back the ability of wireless to serve as a potential competitor and eventual substitute for LEC service than practically any other action that could be taken by the Commission. Wireless should not be forced to incur the costs associated with a mandatory take back of numbers and should not be subject to discriminatory treatment in regards to numbering resources.

B. The Establishment of Calling Party Pays Services Does Not Support the Imposition of a Wireless Only Overlay.

The Petition notes that certain wireless carriers have proposed to trial calling party pays service wherein the caller to the wireless number incurs the wireless airtime charge rather than the wireless customer. The Petition states that if such a proposal is adopted “assignment of a specific area code to

²³ Second Annual CMS Competition Report, pp. 53-55.

²⁴ *For Wireless Services Talk Gets Far Cheaper as Competition Rages*, Wall Street Journal, p. 1 (April 27, 1998).

²⁵ Remarks by William E. Kennard, Chairman, Federal Communications Commission, to CTIA WIRELESS 98, Atlanta, Ga. February 23, 1998.

²⁶ Id.

cellular service (and other wireless services) would alert wireline end users to the fact that they may incur a charge when making a call to a cellular number”.²⁷ While a separate NPA for calling party pays service, much like 900 service, has been suggested—such a suggestion does not equate to support for wireless specific overlays. The flaw in the argument is that not all wireless carriers are interested in providing calling party pays service because of the problems associated with leakage and the effect calling party pays might have on the willingness of landline customers to call wireless numbers. Forcing all wireless carriers into a calling party pays NPA regardless of if they provide the service is unreasonable and detrimental to the establishment of a competitive market. Forcing all carriers into such an NPA would eliminate differing features such carriers might offer as an alternative to calling party pays—features such as free Caller ID and first minute free to allow customers to control the cost of incoming calls. SBC Wireless does not support the creation of a calling party pays NPA and objects to any proposal which would force it into such an NPA when it is not providing calling party pays service. The calling party pays proposal does not lend support to the argument that the Commission should reverse itself and allow service specific overlays.

2. EFFICIENT USE OF NUMBERING RESOURCES SUPPORTS THE COMMISSION’S PAST PROHIBITION ON SERVICE SPECIFIC OVERLAYS.

The Commission seeks comment on how a service specific overlay would affect number conservation and local number portability.²⁸ Number conservation efforts are used to relieve the exhaust of NXX codes. The wireless carriers do not have a need to emulate the rate centers of the incumbent local exchange company and thus do not require an NXX per rate center. Rather, they normally establish relatively few rate centers in an NPA (sometimes as few as one) which allows them to use their numbers efficiently resulting in a high utilization factor.²⁹ Thus, the imposition of a wireless only overlay does not add anything to area code relief efforts other than to introduce 792 new NXXs -- the same as the

²⁷ Petition, p. 10.

²⁸ Public Notice, p. 2.

²⁹ Ironically, the group which has a high rate of utilization is the one proposed to suffer through take back, exclusion and segregation.

opening of any new NPA. The detrimental effect of a wireless only overlay -- as compared to a geographic split or all services overlay, is that the 792 NXXs can only be used for wireless.

Thus, allowing states to impose wireless specific overlays is likely to hasten the exhaust of available NPA codes. Assigning entire NPAs for wireless use only will result in a waste of numbers because it is questionable how quickly wireless will use 7.92 million numbers. Accordingly, when requested to issue a wireless only overlay in 1996, the Director of the North American Numbering Plan Administration refused noting that "such assignments are inefficient" and that "they will almost certainly lead to waste of valuable numbering resources".³⁰

Number portability obviously makes the imposition of a wireless only overlay a costly administrative exercise in futility. The introduction of wireless local number portability would eradicate a wireless only NPA as customers could use their wireless only NPA number for wireline service and customers could use their wireline only number for wireless service. Requiring wireless carriers to take back customers' existing phone number and reprogram the phone at the estimated cost of \$50 per handset seems nonsensical and extremely inefficient in light of number portability. Such is true even if the Commission determines to forbear from implementing the wireless number portability deadline until the end of the five year build out period for the PCS licenses as suggested in the CTIA petition. The Petition to Forbear is based on the the fact that what is essential to wireless competition currently is the ability of the new entrants to build out their networks and the incumbent carriers to upgrade their networks to digital. The Petition to Forbear is based on waiting to implement wireless local number portability until it makes sense technically, economically and competitively -- that is when it will significantly add to rather than detract from a competitive wireless marketplace. A decision to institute wireless overlays would seemingly be a decision to forego wireless/local number portability now and forever.

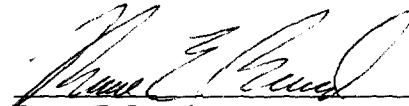
³⁰ Letter from R.R. Connors, Director NANP Administration to Geraldine A. Matise, Chief, Network Services Division dated March 21, 1996.

CONCLUSION

For the reasons stated herein the Commission should refrain from instituting a rulemaking and simply deny the Petition.

Respectfully Submitted,

SBC WIRELESS, INC.

A handwritten signature in black ink, appearing to read "Bruce E. Beard", is written over a horizontal line.

Bruce E. Beard

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